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H.C.P.No.816 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.816 of 2023

Durga Devi

.. Petitioner

Vs

1.The Secretary to Government,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Fort St. George, Chennai – 9.

2.The Commissioner of Police,
Avadi City.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
Prohibition Enforcement Wing,
Ambathur Unit, Avadi City.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the records
relating to the impugned order No.77/BCDFGISSSV/2023 dated
29.03.2023 on the file of the second respondent herein and set aside

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the same as illegal and direct the respondents to produce namely Madhankumar, son of Rajamanickam, aged about 37 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodhkumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the wife of the detenu assailing a 'preventive detention order dated 29.03.2023 bearing reference No.77/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by second respondent (hereinafter 'detaining authority' for the sake of convenience). To be noted, fourth respondent is the sponsoring authority.



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2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.128 of 2023 on the file of Prohibition Enforcement Wing, Amabttur Unit for alleged offence under Section 8(c) r/w 20(b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

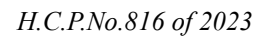


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4. Mr.G.Vinodh Kumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

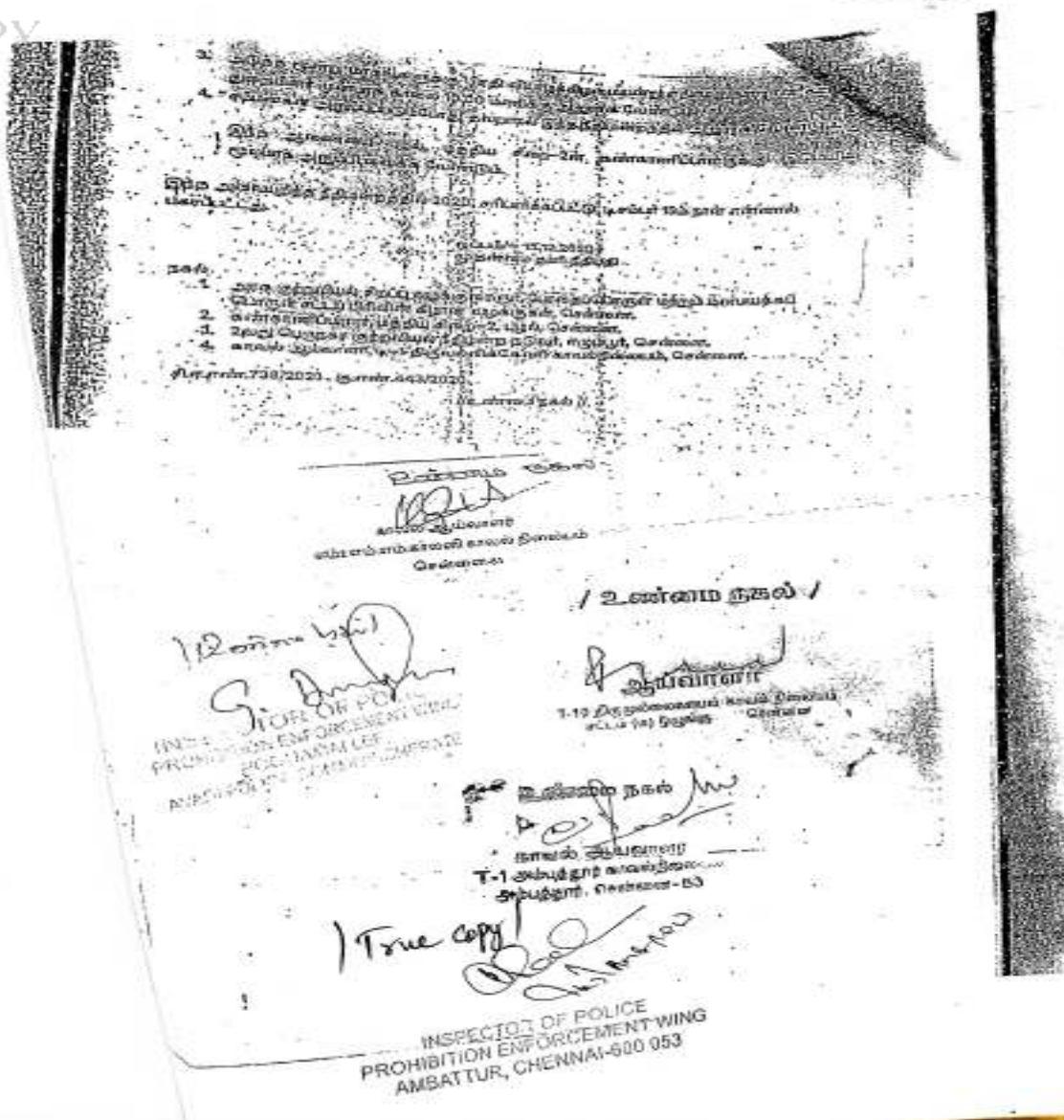
5. Learned counsel for petitioner submitted that the similar case bail order dated 15.12.2020 in CrI.M.P.No.1842 of 2020 on the file of Principal Special Court under EC and NDPS Act, Chennai both in English and Tamil translation furnished in the grounds booklet is completely not readable. As an illustration, learned counsel drew our attention to page Nos.293 and 305 and a scanned reproduction of the same are as follows:





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6. The above mentioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say.

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7. We have no hesitation in persuading ourselves to say that detenu's sacrosanct constitutional right to make an effective representation against the impugned preventive detention order has been impaired owing to the aforementioned copies which are not readable at all. This means that there is infraction of constitutional safeguard ingrained in Article 22 (5) of the Constitution of India leading to the inevitable sequitur that impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.03.2023 bearing reference No.77/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Madhankumar, aged 37 years, Son of Thiru.Rajamanickam, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
01.09.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

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To

- 1.The Secretary to Government,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Avadi City.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
Prohibition Enforcement Wing,
Ambathur Unit, Avadi City.
- 5.The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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